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- <sup>i</sup> See Background Facts at Sections II.D.1 and II.D.3.
- <sup>ii</sup> See *id.* at Sections II.A and II.D.3.
- <sup>iii</sup> See *id.* at Section II.A.
- <sup>iv</sup> See *id.* at Section II.C.
- <sup>v</sup> See *id.* at Section IX.
- <sup>vi</sup> See Independence and Methodology.
- <sup>vii</sup> See *id.*
- <sup>viii</sup> See *id.*
- <sup>ix</sup> See *id.*
- <sup>x</sup> See Background Facts at Sections IV.A, IV.C, IV.E, and VIII.
- <sup>xi</sup> See *id.* at Sections II.D.3, VII, and IX.
- <sup>xii</sup> See *id.* at Sections IX.C-D.
- <sup>xiii</sup> Clean Water Act § 101(a), 33 U.S.C.A. § 1251(a) (West 2015); see Background Facts at Section I.A.
- <sup>xiv</sup> See Background Facts at Section I.B.
- <sup>xv</sup> See *id.*
- <sup>xvi</sup> See *id.*
- <sup>xvii</sup> See *id.*
- <sup>xviii</sup> See *id.*
- <sup>xix</sup> 33 U.S.C.A. § 1344(c); see Background Facts at Section I.C. The full text of Section 404(c) provides that:

The Administrator is authorized to prohibit the specification (including the withdrawal of specification) of any defined area as a disposal site, and he is authorized to deny or restrict the use of any defined area for specification (including the withdrawal of specification) as a disposal site, whenever he determines, after notice and opportunity for public hearings, that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. Before making such determination, the Administrator shall consult with the Secretary. The Administrator shall set forth in writing and make public his findings and his reasons for making any determination under this subsection.

<sup>xx</sup> 40 C.F.R. § 231.3(a) (2010); see Background Facts at Section I.C.

<sup>xxi</sup> See Background Facts at Section I.C.

<sup>xxii</sup> *See id.* Technically, in one of these cases, there was no permit application, however EPA did rely on the permit application of two adjacent and separately-owned parcels to make the determination. EPA deemed the parcel to have the same characteristics as the other two properties and applied its Section 404(c) action to all three properties based on their coextensive characteristics. *See Chronology of 404(c) Actions*, EPA (Sept. 23, 2013), <http://water.epa.gov/lawsregs/guidance/wetlands/404c.cfm>.

<sup>xxiii</sup> EPA, DISCUSSION MATRIX (Sept. 8, 2010), at 1; *see* Background Facts at Section IV.E.

<sup>xxiv</sup> *See* Background Facts at Section III.C.

<sup>xxv</sup> *See id.* at Sections III.D, IV.B, VI.A.2, and VI.B.

<sup>xxvi</sup> *See id.* at Sections III.E, IV.B, VI.A.2, VI.B, and IX.C-D.

<sup>xxvii</sup> *See id.* at Section IV.B.

<sup>xxviii</sup> *See id.*

<sup>xxix</sup> *See id.*

<sup>xxx</sup> *See* Background Facts at Section V.B.

<sup>xxxi</sup> *See id.* at Sections IV.D, IV.G, and V.B.

<sup>xxxii</sup> *See id.* at Section V.B.

<sup>xxxiii</sup> *See id.*

<sup>xxxiv</sup> *See id.*

<sup>xxxv</sup> *See id.* at Section VII.A.

<sup>xxxvi</sup> *See* Background Facts at Sections VI-VII.

<sup>xxxvii</sup> *See id.* at Sections VI.A.2 and VI.B.

<sup>xxxviii</sup> *See id.*

<sup>xxxix</sup> *See id.*

<sup>xl</sup> EPA, RESPONSE TO PEER REVIEW COMMENTS ON THE MAY 2012 AND APRIL 2013 DRAFTS OF AN ASSESSMENT OF POTENTIAL MINING IMPACTS ON SALMON ECOSYSTEMS OF BRISTOL BAY 65-66 (2014); *see* Background Facts at Section VI.A.3.

<sup>xli</sup> EPA, RESPONSE TO PEER REVIEW COMMENTS ON THE MAY 2012 AND APRIL 2013 DRAFTS OF AN ASSESSMENT OF POTENTIAL MINING IMPACTS ON SALMON ECOSYSTEMS OF BRISTOL BAY 65-66, 114-115 (2014); *see* Background Facts at Section VI.A.3.

<sup>xlii</sup> *See* Background Facts at Section VII.

<sup>xliii</sup> *See id.* at Section VII.A.

<sup>xliv</sup> *See id.*

<sup>xlv</sup> *See id.*; *see also id.* at Section IX.

<sup>xlvi</sup> *See id.* at Section VIII.

<sup>xlvii</sup> *See* Background Facts at Sections VIII, VIII.B-C.

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- <sup>xlvi</sup> *See id.* at Section VIII.A.
- <sup>xlix</sup> *See id.* at Sections VIII.B-C.
- <sup>i</sup> *See id.* at Section VIII.D.
- <sup>li</sup> *See id.* at Section IX.
- <sup>lii</sup> *See id.*
- <sup>liii</sup> *See* Background Facts at Section IX.
- <sup>liv</sup> *See id.* at Section X.E.
- <sup>lv</sup> *See* Conclusion and Observations.
- <sup>lvi</sup> *See id.*
- <sup>lvii</sup> *See id.*
- <sup>lviii</sup> *See id.*
- <sup>lix</sup> *See id.*
- <sup>lx</sup> *See id.*
- <sup>lxi</sup> *See* Conclusion and Observations.
- <sup>lxii</sup> *See id.*
- <sup>lxiii</sup> *See id.*



**IER**  
INSTITUTE FOR  
ENERGY RESEARCH



June 4, 2013

The Honorable Bob Perciasepe  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Dear Administrator Perciasepe:

We, the undersigned coalition of taxpayer groups and non-partisan policy organizations from across the country write in opposition to the proposal that the EPA take the unprecedented action of preemptively prohibiting the development of a copper mine in Southwest Alaska (AKA Pebble Mine) before the project has even had the chance to go through the permitting process. New studies show that development of Pebble Mine would result in significant job creation and would generate much needed revenue for state coffers, both in Alaska and the lower 48. President Obama has talked about the need to create high-paying jobs and grow the economy. Development of Pebble Mine would accomplish both. As such, it is imperative that this important project be given a fair hearing.

Over the past several years, environmental lobbying organizations have written to the EPA seeking action to study or to stop the development of Pebble Mine in Southwest Alaska, which would be located on state land designated for mining. In response to these requests, the EPA has undertaken a "watershed assessment" of the Bristol Bay region (the Bristol Bay Assessment). This unprecedented action, which is an "extra regulatory" process, is especially odd given that the Pebble Partnership has yet to formally apply for any permits to construct a mine or enter the NEPA process. Simply put, the EPA's watershed assessment is an ecological risk analysis of a hypothetical mine that has no basis in reality.

The EPA's risk assessment of a hypothetical mine – a mine that, as invented by the EPA could never be permitted today – predicts negative consequences if the hypothetical mine is built. This whole exercise has been unnecessary and unhelpful. Pebble Partnership has invested over \$150 million already in developing environmental baseline data and has stated that the project will not move forward if it cannot be built in a way that meets the most stringent environmental standards and protects the local fishery. The baseline data extensively compiled was virtually ignored by the EPA in creating its assessment.



Our practical concern with the EPA exercise now is the unfair manner in which the agency is conducting its most recent public comments and peer review. The public comment period and peer review of the latest draft of the Bristol Bay Assessment are being conducted concurrently. This means that the peer reviewers will not see the public comments before they give the Agency their assessment. In the last peer review process, where peer reviewers actually held a public comment session, significant flaws in the EPA's science were found — science upon which they may base future decisions. This is not only unfair to parties currently involved in this issue, but also discourages future mining projects and prohibits the creation of jobs.

In addition, the EPA has admitted to cherry picking scientific studies that support its conclusions that the mine will cause environmental damage and sending those studies out for peer review. Many of these studies were produced by known and sometimes outspoken critics of mining (Kuipers, Earth Works, Woody, and others). As previously stated, special credence was given to these environmental groups and the environmental baseline data compiled by the Pebble Partnership was ignored. This is not science. It is bias and it is unacceptable in a report that is portrayed as a scientific document used for future decision-making.

Making matters worse, the actions undertaken by the EPA threaten the creation of thousands of well-paying, private sector jobs in an economic sector that is starved for gainful employment. In fact, studies have shown that the initial construction stages of the mine would create over 4,000 jobs. When completed, Pebble Mine would generate another 3,000 jobs paying an average of \$80,000 per year. Not only will jobs be created in Alaska, Pebble Mine would support up to 11,000 jobs in the lower 48 states. The EPA's present course of actions threatens to kill these jobs before they are even created, or create a false pretense to do so in the future.

Premature judgment and action by the EPA is cause for great concern, not just in Alaska, but across the country. Interested stakeholders should be able to gather information about the potential risks of a mining plan, the potential economic effects, and the true risks of mining development near their communities once an actual plan has been proposed.

Additionally, the agency should separate the public comment process from the peer review so that the peer reviewers have a chance to see the public comments before rendering its opinion to the Agency. Given that no permit application has been submitted, there should be no rush to complete this scientific inquiry.

We appreciate your consideration.



Signed:

Nathan Mehrens  
President, Americans for Limited Government

James Valvo  
Director of Policy, Americans for Prosperity

Nansen Malin  
State Director, AFP-Washington State

Grover Norquist  
President, Americans for Tax Reform

Jim Waters,  
President, Bluegrass Institute for Public Policy

Peter J. Nelson  
Director of Public Policy, Center of the American Experiment

Fred Smith  
President, Competitive Enterprise Institute

Michael Quinn Sullivan,  
President, Empower Texans

Myron Ebell  
Executive Director, Freedom Action

Jonathan Bechtle  
CEO, Freedom Foundation

Benita Dodd  
Vice President, Georgia Public Policy Foundation

Mike Needham  
Chief Executive Officer, Heritage Action for America

Wayne Hoffman  
Executive Director, Idaho Freedom Foundation

Daniel Simmons  
Director of Regulatory & State Affairs, Institute for Energy Research

Jon Sanders  
Director of Regulatory Studies, The John Locke Foundation

Pete Sepp  
Executive Vice-President, National Taxpayers Union

Carl Graham  
CEO, Montana Policy Institute

Kevin P. Kane  
President, Pelican Institute for Public Policy

Don Racheter  
Chief Operating Officer, Public Interest Institute

Paul Gessing  
President, Rio Grande Foundation

Mike Stenhouse  
CEO, Rhode Island Institute for Freedom & Prosperity

Kathleen Hartnett White  
Director, Texas Public Policy Foundation's Armstrong Center for Energy  
and the Environment

March 23, 2018



The Honorable Scott Pruitt  
Administrator  
Environmental Protection Agency  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20460

Dear Administrator Pruitt,

In 2013, organizations from Coast to Coast called on EPA Administrator Gina McCarthy to reject an unprecedented decision on Pebble and warned a preemptive veto, “would have a dramatic chilling effect on investment in America.” Unfortunately, this call went unheeded as the Obama EPA promulgated the ‘Proposed Determination.’ This action was essentially a preemptive veto on the development of a copper mine in Southwest Alaska (AKA Pebble Mine) before the project had the chance to go through the permitting process. The veto was based on incomplete, shoddy analysis and agency collusion with liberal environmental activists and other project opponents.

This action undertaken by the Obama EPA killed the opportunity for thousands of well-paying, private sector jobs, many of which would be held by native Alaskans, in an economic sector and region starved for gainful employment to sustain families. The pre-permit project veto by the previous Administration (and post permit veto in the case of the Spruce Mine) sent a chilling message to the international investment community that banana republics have a more reliable and rational permitting process than the largest economy in the world.

One does not have to be a mining proponent to oppose the unprecedented action taken by the Obama EPA with their preemptive veto of the Pebble Mine—before it even submitted a permit application. The harmful effects of continuing with EPA’s veto process go well beyond the mining industry. The need to secure 404 permits touches every state and all areas of our economy.

The conduct of EPA over the last forty years confirms that its issuance of a preemptive veto in this particular case was unprecedented. EPA has only exercised its authority under Section 404(c) thirteen times. In each previous instance, EPA invoked Section 404(c) only after receipt of a permit application describing the scope and details of the project proposed, the anticipated environmental impact, and the techniques employed to mitigate, which is normal for all applicants under the well-established NEPA process.



The permit process should not be a popularity contest determined by liberal environmental groups. We cannot change the past, but we can change the future. You have the ability to right the wrongs of the past and close the book on the use of a preemptive 404(c) veto.

We are disappointed with your action to suspend the withdrawal of the Obama Administration's 'Proposed Determination' against mining in Southwest Alaska and urge you to move forward with overturning the "veto" as soon as possible. This action would be important step in returning fair and due process to the EPA. Rescinding the preemptive "404(c) veto" will signal to the rest of the world that the United States will re-institutionalize a traditional, rational permitting process—a basis businesses use to make sound investment decisions based on acumen—that would enhance the overall economic growth in the United States.

We appreciate your leadership on reducing the burdensome EPA regulations implemented by the Obama EPA, and we look forward to your action on this issue as well.

Sincerely,

**Myron Ebell**

Director, Center for Energy & the Environment  
Competitive Enterprise Institute

**Brent Gardner**

Chief Government Affairs Officer  
Americans for Prosperity

**Grover Norquist**

President  
Americans for Tax Reform

**Pete Sepp**

President  
National Taxpayers Union

**Daniel Schneider**

Executive Director  
American Conservative Union



060418-Draft Pebble  
Coalition Letter -- Em

The Honorable Scott Pruitt  
Administrator  
Environmental Protection Agency  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20460

Dear Administrator Pruitt,

In 2013, organizations from Coast to Coast called on then-EPA Administrator Gina McCarthy to reject an unprecedented decision on Pebble and warned a preemptive veto, "would have a dramatic chilling effect on investment in America." Unfortunately, this call went unheeded as the Obama EPA promulgated the "Proposed Determination." This action was essentially a preemptive veto on the development of a copper mine in Southwest Alaska (AKA Pebble Mine) before the project had the chance to go through the permitting process. The proposed veto was based on incomplete, shoddy analysis and agency collusion with liberal environmental activists and other project opponents.

This unprecedented Obama EPA action could kill the opportunity for thousands of well paid, private sector jobs in a region and economic sector starved for gainful employment that can sustain families.

The proposed pre-permit project veto by the Obama Administration (and post permit veto in the case of the Spruce Mine) sent a chilling message to the international investment community that banana republics have a more reliable and rational permitting process than the largest economy in the world.

**One does not have to be a mining proponent to oppose the unprecedented action taken by the Obama EPA with their proposed preemptive veto of the Pebble Mine—before it even submitted a permit application. The harmful effects of continuing with EPA's veto process go well beyond the mining industry. The need to secure 404 permits touches every state and all areas of our economy.**

The conduct of the EPA over the last forty years confirms that the issuance of a proposed preemptive veto is unprecedented. EPA has only exercised its authority under Section 404(c) thirteen times. In each previous instance, EPA invoked Section 404(c) only after receipt of a permit application describing the scope and details of the project proposed, the anticipated environmental impact, and the techniques employed to mitigate, which is normal for all applicants under the well-established NEPA process. The permit process should not be a popularity contest determined by liberal environmental groups.

We cannot change the past, but we can change the future. So, while the Corps is now considering the Pebble permit applications, due to a settlement, the pending proposed EPA veto prohibits the Corps from issuing the permit. **You have the ability to right the wrongs of the past and close the book on the use of a preemptive 404(c) veto. Doing works toward your laudatory goal of enacting structural reform that will pay dividends for years, decades, and administrations to come.**

We are disappointed with your action to suspend the withdrawal of the Obama Administration's "Proposed Determination" against mining in Southwest Alaska and urge you to move forward with overturning the proposed "veto" as soon as possible. This action would be an important step in returning fair and due process to the EPA. Rescinding the proposed preemptive "404(c) veto" will also signal to the rest of the world that the United States is re-institutionalizing a traditional, rational permitting process.



We appreciate your leadership on reducing the burdensome regulations implemented by the Obama EPA and we look forward to your action on this and other important matters.

Sincerely,

Myron Ebell  
Director, Center for Energy & the Environment  
Competitive Enterprise Institute

Brent Gardner  
Chief Government Affairs Officer  
Americans for Prosperity

Grover Norquist  
President  
Americans for Tax Reform

Pete Sepp  
President  
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President and CEO  
Georgia Public Policy Foundation

Dave Trabert,  
President  
Kansas Policy Institute

Josh Crawford,  
Co-executive Director  
The Pegasus Institute (Kentucky)

Jordan Harris,  
Co-executive Director  
The Pegasus Institute (Kentucky)

Kevin Waterman  
Chair  
Annapolis Center Right Coalition Meeting (Maryland)

Jameson Taylor  
VP Policy  
Mississippi Center for Public Policy

Paul Gessing  
President  
Rio Grande Foundation (New Mexico)

John M. Tidwell  
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Cascade Policy Institute (Oregon)

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Brett Healy  
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John K. MacIver Institute for Public Policy (Wisconsin)